**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition No. 7411 of 2001 (MS)
Old No.25978/1994

Sri Birendra Singh ..... Petitioner

Versus

State of U.P. & another ..... Respondents

Sri S.K.Posti, Advocate for the petitioner
Standing counsel for the respondents.

Dated: December , 2004

**Hon. Rajesh Tandon J.**

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 28.10.1993 and 10.2.1992 passed by the District Judge, Chamoli and Prescribed Authority Okhimath respectively.

Briefly stated the facts giving rise to the present writ petition are that Patwari, Ukhimath, District Chamoli submitted report dated 21.11.1985, alleging therein that petitioner Birendra Singh had illegally made encroachment over Khasara Plot No. 1127 area 3 Nali and over khasara plot no. 113 area 7 Nali 8 muthi and was doing agriculture over that land. On the basis of the report of Patwari, the Prescribed Authority issued notice to the petitioner under section 4(1) of U.P. Public Premises (Eviction of Unauthorised Occupants) Act, (hereinafter called the Act). Petitioner Birendra Singh filed his

written statement and both the parties adduced evidence. The prescribed authority vide order dated 25th August 1986 directed the eviction of the petitioner from the land in question. Against that order an appeal was preferred by the petitioner before the District Judge, Chamoli. The appeal was allowed and the case was remanded to the prescribed authority for a fresh decision.

After the remand order from the appellate Court the prescribed authority issued afresh notice under section 4(1) of the Act. The opposite party Birendra Singh filed written statement and had contended that he was in possession over the land in question since 1970. Challani land plots no. 1127 and 1138 is adjoining to his Napland plots no. 1128, 1129 and 1130 and he has acquired right over the land in question under Kumaun Nayabad and Waste Lands Act, 1948.

On behalf of the State, Sri Shankar Singh Bagwadi, Kanoongo, Sri Gaber Singh and Sri Ashalal were examined. The opposite party Birendra Singh examined himself and Sri Pushkar Singh in support of his assertions. The prescribed authority after considering the evidence on record directed the eviction of the opposite party Birendra Singh from the land in question vide order dated 10.2.1992. Against the order of eviction the petitioner Birendra Singh has preferred an appeal before the District Judge, Chamoli. Before the appellate Court the appellant has prayed that he was going to file a suit for declaration in the competent court. The appellate court, therefore, dismissed the appeal and directed that the order of eviction passed shall be subject to the final decision of the suit.

Learned counsel for the petitioner has relied upon the reported decision in Baldeo Raj Vs. State of U.P. reported in 1984 ALL. L. J. 872, wherein it has been recorded that definition

as amended excludes " the land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures" and as such the Court has observed that proceedings under section 120 B may be initiated by the Gaon Sabha, to evict such persons on proceeding being initiated as envisaged therein. In order to avoid a conflict of jurisdiction arising between the powers conferred under that Act and the power under the Act, referred to above, the definition given to the expression 'public premises' has deliberately excluded from its purview land vesting in the Gaon Sabhas or some other local authority for which provisions exists in law relating to land tenures.

Similar view has been taken by the Uttaranchal High Court in the case of Harish Chandra Vs. State of U.P. reported in 2002(1) E.L.C. page 508 (H.C.) and it has been observed as under:

> *"6. In the present case, the disputed land is admittedly used by the petitioners for the purposes of agriculture as is evident from the statement on record that the petitioners are in occupation since 1380 Fasli. The U.P.Zamidari Abolition and Land Reforms Act itself provides procedure for eviction of unauthorized occupants under section 122-B of the U.P. Zamindari Abolition and land Reforms Act. The agricultural land is not covered under the U.P. Public Premises (Eviction of Unauthorised Occupants), Act, as is evident from the definition of U.P. Public Premises (Eviction of Unauthorised Occupants), Act, 1972, which reads as under:-*
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> *"2(b) 'Premises' means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes-*

*(i) the garden, grounds and out houses, if any, appertaining to such building or part of a building; and*

*(ii) any fittings or fixtures affixed to or any furniture supplied with such building or part of a building for the more beneficial enjoyment thereof;*

*but does not include land which for the time being is held by a tenure holder under any law relating to land tenures."*

*"2 (e) 'Public premises, means any premises belonging o or taken on lease or requisitioned by or on behalf of the State Government and includes any premises belonging to or taken on lease by or on behalf of-*

*(v) any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty-one per cent of the paid up share capital held by the State Government; or*

*(vi) any local authority; or*
*(vii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government; or*

*(viii) any society registered under the Societies Registration Act, 1860, the government body whereof consists, under the rules or regulations of society, wholly or public officers, or nominees of the State Government or both;*
*and includes,-*

*Nazul land or any other premise entrusted to the management of a local authority (including any building built with Government funds on land belonging to the Ste Government after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures);*
*any premises acquired under the Land Acquisition Act, 1894 with the consent of the State Government for a Company (as defined in that Act) and held by that company under an agreement executed under Section*

*41 of that Act providing for re-entry by the State Government in certain conditions."*

*7. Therefore, a conjoin reading of the definitions given under the U.P. Public Premises (Eviction of Unauthorised Occupants), Act, 1972, of the premises and public remise clearly exclude the application of the provisions of the U.P. Public Premises (Eviction of Unauthorised Occupants), Act, in case a tenure holder holds the land for the time being. In the present case, the evidence is on record that the petitioners were in possession on the disputed land from 1380 Fasli. Therefore, at the time when proceedings were initiated for eviction, the petitioners were a tenure holder for the time being.*

*8. Hence, the petitioners could only be drawn under U.P.Zamidari Abolition and Land Reforms Act and could not have been drawn under the U.P. Public Premises (Eviction of Unauthorised Occupants), Act. Thus, the proceedings initiated under the U.P. Public Premises (Eviction of Unauthorised Occupants), Act which gave rise to these writ petitions, were without jurisdiction."*

In view of the aforesaid proposition of law, the matter is sent back to the Prescribed Authority for deciding the case afresh on the basis of the material evidence on record. The petitioner as well as respondents both are permitted to lead additional evidence in order to show that the land is covered under Gaon Sabha or not. Both the parties are permitted to lead evidence in the light of the judgment reported in 1984 A.L.J. 872 and [ 2002(1) E.L.C. 508 (HC).

The Prescribed Authority shall consider as to whether the petitioner is entitled for regularisation for which Notification has been referred to. Accordingly, the writ petition stands allowed. The matter is sent back to the Prescribed

Authority for deciding the matter afresh in the light of the observations made above. No order as to costs.

**(Rajesh Tandon J.)**

Dated: December 6, 2004

*Dhyani